COMMENT.

In these days when paternalism and socialism in legislation find so many advocates and supporters, the case of *Low* v. *Rees Printing Company*, 59 N. W. Rep. 362, decided by the Supreme Court of Nebraska, on June 6th, is instructive. The case involved the constitutionality of Sections 1 and 3 of Chapter 54 of the Session Laws of 1891. These sections provided, in effect, that for all classes of mechanics, servants and laborers, excepting those engaged in farm and domestic labor, a day's work should not exceed eight hours, and that for working any employé over the prescribed time the employer should pay extra compensation, in increasing geometrical progression, for the excess over eight hours. In a careful opinion, in which the authorities were exhaustively reviewed, the Court decided that the act in question was unconstitutional; because, first, in discriminating against farm and domestic laborers the legislation was special, and was thereby in conflict with Section 15, Article 3, of the Constitution, which provides that "in all cases where a general law can be made applicable, no special law shall be enacted," and, second, the constitutional right of parties to contract with reference to compensation for services is denied. The Court disposed of the argument that the act was a police regulation, by observing that "under pretense of the exercise of that power the legislature cannot prohibit harmless acts, which do not concern the health, safety, and welfare of society."

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What is a "newspaper" within the meaning of a statute providing for the publication in a newspaper of certain notices of probate proceedings? This question recently came up for decision before the Supreme Court of Michigan, in the case *Lynch* v. *Durfee, Probate Judge* (59 N. W. Rep. 409). The appellee, the probate judge, had ordered that a certain notice of hearing be published in the Wayne County *Legal News*. The appellant had sought to obtain a writ of prohibition against the Probate Court in the Circuit Court of Wayne County, on the ground that the before mentioned journal was not a newspaper within the meaning of the statute. The writ of prohibition was denied, and the case came to the Supreme Court on certiorari. The journal to which objection was taken was a weekly publication, devoted, primarily, to the interests of the legal profession but containing matters of interest to the general public. The Court, in deciding that the

journal in question was a newspaper within the meaning of the statute, say, "But a newspaper, even in the days when these statutes were enacted, meant what it means to-day—a sheet of paper printed and distributed at short intervals for conveying intelligence of passing events; a public print that circulates news, advertisements, proceedings of legislative bodies, public documents and the like."

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By Act of Congress, November 3d, 1893, a Chinaman claiming to be a merchant, and making application for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, is required to establish by the testimony of two creditable witnesses, other than Chinese, that he was engaged in this country in buying and selling merchandise at a fixed place of business conducted in his own name for at least one year before his departure from the United States, and that during that year he was not engaged in manual labor, except such as was necessary for his business as merchant. A case turning on the application of this act is reported in 61 Fed. Rep. 395, *In re Quan Gui.* The petitioner, a Chinaman, claimed that he was entitled to enter the United States, as he was a merchant, member of the firm of Yow, Kee & Co. Several witnesses, not Chinese, were called for the petitioner, who testified to his connection with the firm of Yow Kee, and this testimony was supported, in the argument, by a statement that Chinese merchants select words of supposed lucky import for company or firm names. The Court, however, pointed out that in the petition the firm name is given as Yow, Kee & Co., and observed that this fact would indicate that the name was not a word but the business title of two or more individuals associated together. And it was held that "as there was no proof that the petitioner conducted any business in his own name, and no explanation was given of the fact that his name did not appear in the firm name, as is usual in partnerships in this country, he must be refused a landing in accordance with the express direction of the statute."

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A case which, in the words of the Court, "raises a new and important question under the copyright act of March 3d, 1891, (26 Stat. 1106)," was decided in the Circuit Court D. Massachusetts in August last (*Littleton et al.* v. *Oliver Ditson Co.*, 62 Fed. Rep. 597). The question was whether a musical composition is a book or lithograph within the meaning of the proviso in Section 3 of the act, which declares that in the case of a "book, photo-

graph, chromo or lithograph," the two copies required to be deposited with the Librarian of Congress shall be manufactured in this country. This act, which extends to foreigners the privilege of copyright, recites in Section 3 the conditions to be complied with. These conditions are, in part, as follows: The applicant for copyright "shall deliver at the office of the librarian two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same, provided that in the case of a book, photograph, chromo or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom." It seems clear from the mention both of "book" and "musical composition" in the section which enumerates the things which may be copyrighted, that the former word was not intended to include the musical composition. Then, in the proviso which enumerates the copyrighted things that must be manufactured in this country, "book, photograph, chromo" and "lithograph" only are mentioned; "musical composition," as well as "map, chart," "engraving," being omitted. From this examination of the words of the act the Court comes to the conclusion that "musical compositions" were intentionally excepted from the operation of the proviso. This decision, which seems clearly right, enables foreign publishers of music to copyright in this country without manufacturing their productions within the limits of the United States.

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An interesting case, involving the liability of municipal corporations for damages from death by the act of a mob, was decided a short while back by the Circuit Court of Appeals, Fifth Circuit (*City of New Orleans* v. *Abbagnato*). The facts were these: Abbagnato, an Italian, with some twenty other persons, was arrested and tried on a charge of murder of the chief of police of the City of New Orleans, and was acquitted. Pending further legal proceedings, however, he was detained in custody in the parish prison. From this prison he and some others were taken by an organized and riotous mob, and was riddled with bullets after having been hanged on a lamp-post on the street. Thereupon his mother sued the City for damages for her son's death, alleging culpable negligence on the part of the police. The case was tried

in the Circuit Court of the United States, and a verdict rendered against the City for $5,000. The City brought the case for review, assigning as error that municipal corporations of Louisiana are not liable for damage by mobs, except for damage to property. The Circuit Court of Appeals, in reversing the decision of the court below, brings out clearly the principle governing the liability of municipal corporations in such cases. This liability, when it exists, is entirely a matter of statute. "In the case of *State* v. *Mayor, etc.*, of New Orleans, 109 U. S. 285, the Supreme Court of the United States held that the right to demand reimbursement from a municipal corporation for damages caused by a mob is not founded on contract. It is a statutory right and may be given or taken away at pleasure." The reason of this rule is obvious. "Such actions are actions to hold such corporations liable in damages for a failure to preserve the public peace. The preservation of the public peace primarily devolves upon the sovereign." It follows, of course, that when this duty is devolved by the State on to a municipal corporation, the corporation in the discharge of it, is charged with governmental functions, and "is entitled to the same immunity as the sovereign granting the power for negligence in preserving the public peace, unless such liability is expressly declared by the sovereign." Mr. Justice Bradley in case of *State* v. *Mayor, etc.*, of New Orleans, *supra*, said, "that remedies against municipal bodies for damages caused by mobs or other violators of law, unconnected with the municipal government, are purely matters of legislative policy, depending on positive law, which may at any time be repealed or modified, either before or after the damage has occurred, and the repeal of which causes the remedy to cease." It is clearly laid down, and the principle may be taken to be that there is no liability attaching to a municipal corporation for damages resulting from a negligent discharge of its *public* duties, that is, the sovereign duties granted to it by the State, unless such liability is expressly fixed upon it by statute. When such liability *is* fixed upon them it is thus laid down by Dillen (Mun. Corp. Sec. 980), wherein the author says, "The doctrine may be considered as established *where a given duty is a corporate one*, that is, one which rests upon the municipality in respect of its special or local interests and not as a public agency, and is *absolute and perfect* and not discretionary and judicial in its nature, and is *one owing to the plaintiff* or in the performance of which he is specially interested, that the *corporation is liable in a civil action* for the damages resulting to individuals by the neglect to perform the duty," etc.